

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEBRON DANIEL, et al.,

No. C-13-1084 MMC

Plaintiffs,

**ORDER DENYING PLAINTIFFS' MOTION
FOR LEAVE TO FILE MOTION FOR
RECONSIDERATION OF ORDER ON
MOTION TO DISMISS SECTION 52.1
CLAIM; EXTENDING DEADLINE TO FILE
FOURTH AMENDED COMPLAINT**

v.

CITY OF ANTIOCH, et al.,

Defendants.

Before the Court is plaintiffs' "Motion for Leave to File Motion for Reconsideration of Order on Motion to Dismiss Section 52.1 Claim," filed December 12, 2013. By said motion, plaintiffs seek leave to file a motion for reconsideration of the Court's order of December 3, 2013, to the extent the order dismissed plaintiffs' Fifth Cause of Action, a claim under § 52.1 of the California Civil Code and alleged on behalf of plaintiffs Kebron Daniel and Lilay Inc. Having read and considered the motion, the Court rules as follows.

Section 52.1 provides for a cause of action against a person who "interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of [California]." See Cal. Civil Code § 52.1(a). In its prior order, the Court found plaintiffs' § 52.1 claim subject to dismissal, with leave to amend, because plaintiffs had

1 failed to allege that defendants' seizure of property resulted from threats, intimidation, or
2 coercion. (See Order, filed December 3, 2013, at 3:4-12.) In support thereof, the Court
3 cited Jackson v. City of Fresno, 257 Fed. Appx. 144 (9th Cir. 2007), in which the Ninth
4 Circuit held that, for purposes of § 52.1, a "deprivation of a constitutional right must result
5 from a threat, intimidation, or coercion." See id. at 146. Plaintiffs argue they are entitled to
6 seek reconsideration because, they assert, defendants did not argue in their motion to
7 dismiss that plaintiffs had failed to allege causation, nor cite to the case upon which the
8 Court relied for its ruling. Under such circumstances, plaintiffs contend, "a material
9 difference in fact or law exists from that which was presented to the Court before entry of
10 the interlocutory order for which reconsideration is sought." (See Pl.s' Mot. at 2:12-13, 3:1-
11 4 (citing Civil L.R. 7-9(b)(1) (identifying showing necessary to support motion for leave to
12 file motion for reconsideration)).)

13 For purposes of the instant motion, the Court assumes, arguendo, the Local Rule on
14 which plaintiffs rely is applicable to the circumstances as described by plaintiffs, to wit, that
15 they were not alerted to an issue the Court found significant, and, consequently, were
16 unfairly surprised by the Court's ruling. Whatever equitable force such argument may
17 carry, however, it is not persuasive here, as defendants, contrary to plaintiffs' assertion, did
18 argue in their motion to dismiss that plaintiffs had failed to allege causation. In that regard,
19 defendants cited to, and indeed quoted, a district court case holding two of the "elements"
20 of a § 52.1 claim are that "defendants interfered with plaintiff's constitutional rights by
21 threatening or committing violent acts" and that "defendants' conduct was a substantial
22 factor in causing plaintiffs' harm." (See Defs.' Mot., filed November 1, 2013, at 8:16-21
23 (emphasis in original) (quoting Tolosko-Parker v. County of Sonoma, 2009 WL 498099, *5
24 (N.D. Cal. 2009).) Further, in reliance thereon, defendants argued that plaintiffs' § 52.1
25 claim was "unsupported by sufficient facts" because "[t]here [were] no allegations that the
26 officers used violence or threats of violence in carrying out the underlying search and
27 seizure." (See id. at 15:9-13.) To the extent the Court cited to a Ninth Circuit case, rather
28 than to a district court case, for the legal proposition on which defendants relied does no

1 more than add further support for an argument already made by defendants. In sum,
2 plaintiffs have failed to show they are entitled to file a motion for reconsideration.

3 Moreover, even if plaintiffs were afforded an opportunity to reargue the matter, their
4 proposed argument lacks merit and, consequently, the filing of a motion for reconsideration
5 would be futile. In particular, plaintiffs seek to argue that the Ninth Circuit's holding in
6 Jackson is erroneous, because, plaintiffs contend, the California Supreme Court only
7 requires the deprivation of a right be "accompanied by," as opposed to "result[ing] from,"
8 threats or coercion. (See Pls.' Mot. at 3:6-8, 22-25 (citing Venegas v. County of Los
9 Angeles, 32 Cal. 4th 820 (2004) and Jones v. Kmart Corp., 17 Cal. 4th 329 (1998)).)
10 Although plaintiffs are correct that the California Supreme Court has used the phrase
11 "accompanied by," see Venegas, 32 Cal. 4th at 843; Jones, 17 Cal. 4th at 334, it is clear
12 that causation, as identified in Jackson, is an element of § 52.1. Indeed, in Venegas, the
13 California Supreme Court held the statute's "provisions are limited to threats, intimidation,
14 or coercion that interfere with a constitutional or statutory right," see Venegas, 32 Cal. 4th
15 at 843; see also, e.g., M.H. v. County of Alameda, 2013 WL 1701591, *7 (N.D. Cal. April
16 18, 2013) (explaining plaintiffs in Venegas had sufficiently stated claim where officers
17 engaged in "series of actions involving 'threats, intimidation, or coercion' that resulted in
18 the plaintiff's unreasonable seizure"); in Jones, the California Supreme Court cited, as an
19 example of a party who would be subject to suit under § 52.1, an individual who
20 "threatened to injure the [plaintiff] if she did not . . . consent to an official and warrantless
21 search of her premises," see Jones, 17 Cal. 4th at 334. Nothing in Venegas or Jones
22 suggests that a plaintiff would have a cognizable § 52.1 claim based on a threat made at or
23 around the same time as a search and seizure, but which threat lacked a causal connection
24 to the search and seizure.


25 Accordingly, for all of the above reasons, plaintiffs' motion is hereby DENIED.

26 Lastly, as noted, the challenged order dismissed plaintiffs' § 52.1 claim with leave to
27 amend; the present deadline to amend is December 20, 2013. Because plaintiffs may
28 have relied on the filing of the instant motion to effectuate a stay, the Court hereby

1 EXTENDS the deadline for plaintiffs to file a Fourth Amended Complaint to January 8,
2 2014.

3 **IT IS SO ORDERED.**

4
5 Dated: December 20, 2013


MAXINE M. CHESNEY
United States District Judge